IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

**APPEAL FROM ORDER NO.36 OF 2000**

1. Smt.Suman Heramb Pathak
2. Vishwas Heramb Pathak
village Kadus, Tal.:Khed,
Dist.: Pune ... Appellants

V/s.

Anjanabai Tukaram Tupe
r/at: LKadus, Tal.:Khed
Dist.:Pune ... Respondent

Mr.P.J. Pawar for Appellants

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 15, 2004**

**ORAL JUDGMENT:**

. The appellants have challenged the order below Exhibit 5 passed on 18.8.1999. By this order, the trial Court had granted an ad-interim injunction restraining the defendant from creating third party interest in the suit property till the disposal of the suit.

2. The appellants who were defendants in the suit claimed that the suit was filed on the basis of a forged receipt allegedly issued by the appellants to the respondent. On this basis, the respondent has claimed that the appellants had agreed to sell the suit lands valued on Rs.17 lacs by accepting Rs.5001/- on

26.3.1999. The respondents claimed that time was the essence of the contract and, therefore, filed a suit for specific performance being civil Suit NO.711 of 1990 before the Civil Judge, Senior Division, Pune. The application for interim relief under Order 39 Rules 1 and 2 of C.P.C. was also filed. After hearing the parties, the trial Court granted ad-interim injunction restraining the defendants from creating any third party interest in the suit premises.

3. Taking exception to this direction and the findings of the trial Court, Mr.Pawar appearing for the Appellants, submits that the trial Court has not considered the fact that there was no agreement on record of which specific performance was sought. He submits that the trial Court had granted relief despite the fact that the allegation in the plaint that consideration had been agreed upon by the parties was baseless and unsubstantiated. He submits that when the document itself was not filed before the Court, the trial Court ought not to have passed the impugned order.

4. The trial Court, in my view, has completely erred in granting interim relief. The observations made by the trial Court that there was no agreement brought on record ought to have dissuaded it from granting the Plaintiff any relief. Further, when the execution of

the receipt itself was denied, the trial Court ought not to have granted the interim relief. The trial Court it appears was convinced by the affidavit filed by the attesting witness. This in my view, would not be sufficient to indicate at a prima facie stage that there was an agreement between the appellants and the respondent. The trial Court ought not to have granted relief when the agreement was not produced on record.

5. Appeal from Order is allowed. The order of the trial Court is set aside. No order as to costs.